

Justice and the Law

JAMES EDWARDS & ADAM PERRY

INTRO

This seminar series is about two main topics. The first topic is the relationship between justice and law. It is often said that law should, in some sense, prioritise justice. Justice is supposed to be first virtue of law. But what does that mean, exactly? And is it really true? The second topic is the limits on justice. Justice demands that others be treated in certain ways, for example, that they be blamed for certain wrongs. Is it always fitting for the law to act on those demands, even if, for example, the law was complicit in the wrongdoing? Should the law ever forego justice and instead show mercy, forgive, tolerate, etc.?

PRESENTATIONS

In seminars 2-7, two or three students will give short presentations on different items of required reading. We will normally ask for volunteers at the end of the previous seminar.

Presentations should do several things: (1) summarise – very briefly, given that the other students will have read the piece – the author's key claims; (2) critically assess some or all those claims; and (3) identify points of difficulty or ambiguity that it would be useful for the class to discuss together. Most of the time should be spent on (2). 'Critically assess' might include identifying objections to the author's claims, providing additional arguments for those claims, clarifying or refining those claims, responding to possible objections, comparing the author's claims to ones made by other authors, extending or applying the argument to other contexts or examples, etc.

Each presentation should be accompanied by a handout. It should be at most one page and it can be circulated at the beginning of the seminar.

PARTICIPATION

Seminars go best when everyone is engaged and contributing. While there are exceptions, a good rule of thumb is to make at least one contribution every seminar.

LOCATION & TIMES

Platnauer Room, Brasenose College
11am-1pm, Wednesdays, weeks 1-5 and 7-8

1. JUSTICE

1.1. BACKGROUND READING

D Miller, 'Justice' in The Stanford Encyclopedia of Philosophy (Fall 2017 edn).

A Walen, '[Retributive Justice](#)' in The Stanford Encyclopedia of Philosophy (Fall 2020 edn).

1.2. REQUIRED READING

J Gardner, '[The Virtue of Justice and the Character of Law](#)' in his *Law as a Leap of Faith* (2013).

J Tasioulas, '[Punishment and Repentance](#)' (2006) 81 *Philosophy* 279

1.3. FURTHER READING

A von Hirsch, *Censure and Sanctions* (1993) Ch 2.

M Moore, *Placing Blame* (1997) Chs 2 and 3.

J Waldron, 'The Primacy of Justice' (2003) 9 *Legal Theory* 269.

H Sheinman, 'The First Virtue of the Law Courts and the First Virtue of the Law' (2007) 13 *Legal Theory* 101.

V Tadros, *The Ends of Harm* (2011) Ch 4.

J Finnis, *Natural Law and Natural Rights* (2nd edn 2011), Ch VII.

J Gardner, 'Finnis on Justice', in Keown and George (eds) *Reason, Morality and Law* (2013).

J Tasioulas, 'Justice, Equality and Rights' in Crisp (ed) *The Oxford Handbook of the History of Ethics* (2013).

L Green, 'The Germ of Justice', Oxford Legal Studies Research Paper (2020).

1.4. QUESTIONS

1. Does injustice consist in failing to give people their due?
2. Are we ever justified in acting unjustly?
3. Is justice the first virtue of legal institutions?
4. Is justice the first virtue of adjudicative institutions?
5. Is there such a thing as retributive justice?
6. What is the relationship between retributive justice and justified punishment?

2. BLAME

2.1. BACKGROUND READING

N Tognazzini and J Coates, '[Blame](#)' in The Stanford Encyclopedia of Philosophy (Fall 2018 edn).

2.2. REQUIRED READING

TM Scanlon, *Moral Dimensions: Meaning, Permissibility, Blame* (2008) ch 4.

M Fricker, '[What's the Point of Blame? A Paradigm-Based Explanation](#)' (2016) 50 *Nous* 165.

D Shoemaker and M Vargas, '[Moral Torchfishing: A Signaling Theory of Blame](#)' (2021) 55 *Nous* 581.

2.3. FURTHER READING

R Jay Wallace, *Responsibility and the Moral Sentiments* (1994) ch 3.

P Hieronymi, 'The Force and Fairness of Blame' (2004) 18 *Philosophical Perspectives* 115.

G Sher, *In Praise of Blame* (2006) ch 5-6.

S Wolff, 'Blame: Italian Style' in Wallace, Kumar, and Freeman (eds) *Reasons and Recognition: Essay on the Philosophy of T. M. Scanlon* (2011).

M Mckenna, '[Directed Blame and Conversation](#)', in Coates and Tognazzini (eds) *Blame: Its Nature and Norms* (2012).

A Smith, 'Moral Blame and Moral Protest' in Coates and Tognazzini (eds) *Blame: Its Nature and Norms* (2012).

2.4. QUESTIONS

1. What, if anything, makes blame morally problematic?
2. Is the paradigm case of blame that in which blame is communicated? If so, why?
3. Does blame have a function? If so, what is it?
4. If P has no emotional reaction to V's conduct, does it follow that P does not blame V for that conduct?
5. If P takes her relationship with V to be impaired by V's conduct, and modifies that relationship accordingly, does P thereby blame V?

3. STANDING I

3.1. BACKGROUND READING

GA Cohen, [‘Casting the First Stone: Who Can and Who Can’t Condemn the Terrorists’](#) (2006) 58 Royal Institute of Philosophy Supplement 113.

3.2. REQUIRED READING

P Todd, [‘A Unified Account of the Standing to Blame’](#) (2019) 53 *Nous* 347-374.

M Bell, [‘The Standing to Blame: A Critique’](#), in Coates and Tognazzini, *Blame: Its Nature and Norms* (2012).

G Watson, [‘A Moral Predicament in the Criminal Law’](#) (2015) *Inquiry* 168.

3.2. FURTHER READING

RJ Wallace, ‘Hypocrisy, Moral Address, and the Equal Standing of Persons’ (2010) *Philosophy & Public Affairs* 307-341.

RA Duff, [‘Blame, Moral Standing and the Legitimacy of the Criminal Trial’](#) (2010) *Ratio* 123-140.

V Tadros, [‘Poverty and Criminal Responsibility’](#) (2009) *The Journal of Value Inquiry* 391-413.

D Dover, ‘The Walk and the Talk’ (2019) *The Philosophical Review* 387.

K Fritz, ‘Hypocrisy, Inconsistency and the Moral Standing of the State’ (2019) *Criminal Law and Philosophy* 309.

K Lippert-Rasmussen, ‘Why the moral equality account of the hypocrite’s lack of standing to blame fails’ (2020) 80 *Analysis* 666.

3.4. QUESTIONS

1. What is it to lack the standing to blame?
2. On what grounds do we lack standing when we lack it?
3. Are we ever justified in blaming those we lack standing to blame?
4. Why would being complicit in a wrong deprive us of the standing to blame a wrongdoer?
3. Do norms of standing compromise justice? Are they required by justice? Both? Neither?
5. Does distributive injustice deprive the state of the standing to do retributive justice? If so, why?

4. STANDING II

4.1. BACKGROUND READING

J Edwards, '[Standing to Hold Responsible](#)' (2019) *Journal of Moral Philosophy* 437

4.2. REQUIRED READING

T Nagel, '[Concealment and Exposure](#)' (1998) 27 *Philosophy and Public Affairs* 3.

RA Duff, '[Responsibility, Citizenship and Criminal Law](#)' in Duff and Green (eds) *Philosophical Foundations of Criminal Law* (2011).

J Gardner, '[Relations of Responsibility](#)' in Cruft, Kramer and Reiff (eds) *Crime, Punishment and Responsibility: The Jurisprudence of Antony Duff* (2011).

4.3. FURTHER READING

L Radzik, 'On Minding Your Own Business: Differentiating Accountability Relations Within the Moral Community' (2011) 37 *Social Theory and Practice* 574.

L Radzik, '[On The Virtue of Minding Our Own Business](#)' (2012) 45 *Journal of Value Inquiry* 173.

G Williams, 'Sharing Responsibility and Holding Responsible' (2013) 30 *Journal of Applied Philosophy* 351.

J Edwards and AP Simester, 'What's Public About Crime?' (2017) 37 *OJLS* 105.

O Herstein, 'Justifying Standing: Hypocrisy, Minding Your Own Business, and Knowing One's Place' (2020) *Philosophers' Imprint*.

4.4. QUESTIONS

1. Is minding one's own business a virtue?
2. How do we determine what is and is not our business?
3. If it is none of my business whether you commit a wrong, do I have reason to hold you responsible for that wrong?
4. Is meddling unjust?
5. What is (and what is not) the business of the state?
6. Are the moral horizons of the law determined by the moral concerns of the political community?

5. MERCY

5.1. BACKGROUND READING

G Rainbolt, [‘Mercy: In Defense of Caprice’](#) (1997) 31 *Nous* 226

N Markosian, [‘Two Puzzles About Mercy’](#) (2013) 63 *Philosophical Quarterly* 269

5.1. REQUIRED READING

J Murphy, [‘Mercy and Legal Justice’](#) (1986) 4 *Social Philosophy & Policy* 1

RA Duff, [‘Mercy’](#) in J Deigh and D Dolinko (eds), *The Oxford Handbook of Criminal Law* (2011)

5.2. FURTHER READING

Seneca, *On Mercy*

C Card, ‘On Mercy’ (1972) 81 *Philosophical Review* 182

M Nussbaum, ‘Equity and Mercy’ (1993) 22 *Philosophy and Public Affairs* 83

A Smart, ‘Mercy’ (1968) 43 *Philosophy* 345 (the article that set the tone for most modern discussions of mercy)

J Tasioulas, [‘Mercy’](#) (2003) 103 *Proceedings of the Aristotelian Society* 101

A Tuckness & J Parrish, *The Decline of Mercy in Public Life* (2014), ch 9

A Perry, [‘Mercy’](#) (2018) 46 *Philosophy & Public Affairs* 60

5.4. QUESTIONS

1. What is the ‘private law model’ of mercy?
2. Can judges show mercy while treating like cases alike?
3. Suppose that it would be illegitimate for a judge to ‘ignore the just deserts of an individual’ in a criminal context. Is Murphy correct that ‘a chief executive or head of state’ might nonetheless legitimately ignore those deserts and ‘pardon that [same] individual’?
4. If a judge shows mercy, has the judge failed as a judge or as a person?
5. Is a merciful act necessarily an unjust act?
6. Is a merciful act necessarily an unjustified act?
7. Is it unjust for one person to have the power to show mercy to another?

6. FORGIVENESS

6.1. BACKGROUND READING

PM Hughes, [‘Forgiveness’](#) in The Stanford Encyclopedia of Philosophy (Summer 2017 edn).

L Zaibert, [‘The Paradox of Forgiveness’](#) (2009) 6 *Journal of Moral Philosophy* 365–393.

6.2. REQUIRED READING

JG Murphy, [‘Forgiveness and Resentment’](#) (1982) 7 *Midwest Studies in Philosophy* 503–516.

C Bennett, [‘The Alteration Thesis: Forgiveness as a Normative Power’](#) (2018) 46 *Philosophy and Public Affairs* 207.

6.3. FURTHER READING

N Richards, ‘Forgiveness’ (1988) 99 *Ethics* 77.

D Novitz, ‘Forgiveness and Self-Respect’ (1998) 58 *Philosophy and Phenomenological Research* 299.

PE Digeser, ‘Forgiveness and Politics: Dirty Hands and Imperfect Procedures’ (1998) 26 *Political Theory* 700.

P Hieronymi, ‘Articulating an Uncompromising Forgiveness’ (2001) 62 *Philosophy and Phenomenological Research* 529.

L Allais, ‘Wiping the Slate Clean: The Heart of Forgiveness’ (2008) 36 *Philosophy and Public Affairs* 33.

G Pettigrove, ‘The Standing to Forgive’ (2009) 92 *The Monist* 583.

N Lacey and H Pickard, [‘To Blame or to Forgive: Reconciling Punishment and Forgiveness in Criminal Justice’](#) (2015) 35 *Oxford Journal of Legal Studies* 665.

B Warmke, ‘The Normative Significance of Forgiveness’ (2016) *Australasian Journal of Philosophy* 687.

M Wonderly, ‘Forgiving, Committing, and Un-forgiving’ (2021) 104 *Philosophy & Phenomenological Research* 474

6.4. QUESTIONS

1. Can we forgive those we continue to resent?
2. Do we have a power to forgive? If so, what justifies its existence?
3. Are there wrongs that are unforgivable?
4. When, if ever, do those who are not wronged have the standing to forgive?
5. Is institutional forgiveness possible? If so, under what conditions?
6. Does justice conflict with forgiveness? Sometimes? Always?

7. APOLOGY

7.1. BACKGROUND READING

L Bovens, 'Apologies' (2008) 108 *Proceedings of the Aristotelian Society* 219

A Martin, 'Owning Up and Lowering Down: The Power of Apology' (2010) 107 *The Journal of Philosophy* 534

7.2. REQUIRED READING

J Murphy, 'Remorse, Apology, and Mercy' (2007) 4 *Ohio State Journal of Criminal Law* 423

J Gardner, 'Say it with Flowers' in *From Personal Life to Private Law* (OUP 2018)

A Smith, '[Institutional Apologies and Forgiveness](#)' in B Warmke, DK Nelkin and M Mckenna (eds) *Forgiveness and its Moral Dimensions* (OUP 2021).

7.3. FURTHER READING

C Griswold, 'Political Apology, Forgiveness, and Reconciliation' in *Forgiveness: A Philosophical Exploration* (CUP 2007)

B Warmke, 'Articulate Forgiveness and Normative Constraints' (2015) 45 *Canadian Journal of Philosophy* 490

G van Dijck, 'The Ordered Apology' (2017) 37 *Oxford Journal of Legal Studies* 562

Andrew I Cohen, *Apologies and Moral Repair* (Routledge 2020)

7.4. QUESTIONS

1. Who can apologise for what and to whom?
2. Do apologies provide reasons for forgiveness?
3. Do apologies provide reasons not to blame? Not to punish?
4. Is compensation a type of, an alternative to, a prerequisite of, ... apology?
5. Can the law apologise? Can the state?